

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 21
EMPC 333/2024**

IN THE MATTER OF An application for orders under s 140(6) of
 the Employment Relations Act

BETWEEN SAM WILSON
 Plaintiff

AND AZ SCAFFOLDING (2017) LIMITED
 Defendant

Hearing: On the papers

Appearances: R Anderson, advocate for plaintiff
 No appearance for defendant

Judgment: 19 February 2025

JUDGMENT OF JUDGE J C HOLDEN

[1] Sam Wilson seeks orders against AZ Scaffolding (2017) Ltd, including under s 140(6) of the Employment Relations Act 2000. Although it was served with Mr Wilson’s current application, AZ Scaffolding has taken no steps in the Court.

[2] In its substantive determination of 17 May 2023, the Authority ordered that AZ Scaffolding pay Mr Wilson \$15,000 as compensation for humiliation, loss of dignity and injury to feelings under s 123(1)(c)(i) of the Act, together with \$198 on account of wages owed to him.¹ The Authority subsequently ordered A Z Scaffolding to pay Mr Wilson \$3,000 as a contribution to his costs.²

¹ *Wilson v AZ Scaffolding (2017) Ltd* [2023] NZERA 249 at [60].

² *Wilson v AZ Scaffolding (2017) Ltd* [2023] NZERA 336.

[3] AZ Scaffolding applied to the Authority for it to reopen its investigation, but was unsuccessful.³ That led to a further costs award in Mr Wilson's favour of \$1,400.⁴

[4] After none of the amounts due were paid, Mr Wilson sought and obtained a compliance order requiring AZ Scaffolding to pay him \$18,198.⁵ In addition, he was awarded costs and disbursements on his application of \$1,071.56.⁶ The Authority also ordered interest on the substantive award of \$15,198 to be paid from 14 June 2023 until the amount awarded in the substantive determination was fully paid.⁷

[5] Although Mr Wilson seeks orders with respect to all the amounts AZ Scaffolding was ordered to pay, the Court's jurisdiction under s 140 is limited to imposing a sanction under s 140(6) for AZ Scaffolding failing to comply with the compliance order.⁸

[6] Mr Anderson, advocate for Mr Wilson, says AZ Scaffolding's non-compliance has had significant adverse effects on Mr Wilson, including financial hardship due to the non-compliance, emotional distress resulting from job insecurity or unfair treatment, and erosion of trust in workplace relations and processes designed for dispute resolution. Although some evidence has been provided by Mr Anderson, including in respect of Mr Wilson's bank account, Mr Wilson has not provided his own affidavit, which is surprising.

[7] I am satisfied, however, from the evidence Mr Anderson has supplied, that AZ Scaffolding has not made any payment to Mr Wilson, as was required by the Authority.

Sanctions are available

[8] Sanctions under s 140(6) are available even where the Authority's compliance order is in respect of a monetary order.⁹ That being the case, AZ Scaffolding is liable

³ *Wilson v AZ Scaffolding (2017) Ltd* [2023] NZERA 536.

⁴ *Wilson v AZ Scaffolding (2017) Ltd* [2023] NZERA 604.

⁵ *Wilson v AZ Scaffolding (2017) Ltd* [2023] NZERA 722 at [17]-[18].

⁶ At [23].

⁷ At [25].

⁸ Above, n 5.

⁹ *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)* [2016] NZCA 464, [2017] 2 NZLR

to a sanction under s 140(6). There are no proceedings on foot, so s 140(6)(a) and (b) are irrelevant. An order of imprisonment under s 140(6)(c) is unavailable here, given the defendant is a company, and sequestration, which is available under s 140(6)(e), is involved and complex and Mr Wilson has not addressed the technical requirements covering the necessary infrastructure for such an order.¹⁰ In any event, both sequestration and imprisonment are sanctions of last resort.¹¹

[9] That leaves the option of a fine not exceeding \$40,000, available under s 140(6)(d), which is still serious.

[10] The Courts have previously expressed concerns about fines being ordered for non-payment of monetary orders in the absence of enforcement actions being taken against the debtor party.¹²

[11] One of the difficulties is that identified in *Oliver v Biggs*, that the issuing of a fine, and an order for costs on the application, could lead to a disproportionate cycle of serial applications, contrary to the primary purpose of the section, which is to secure compliance with the substantive orders made.¹³ The plaintiff gets no further in their pursuit of the monies to which they are entitled.

[12] Pursuant to s 141 of the Act, any order made under the Act (or other employment legislation) by the Authority may be filed in the District Court, and is then enforceable in the same manner as an order made or judgment given by the District Court. That will usually be an appropriate course for enforcing a monetary award from the Authority.¹⁴ Where, as here, the debtor is a registered company, the

451 at [28].

¹⁰ *ABC01 Ltd (formerly Primary Heart Care Ltd) v Dell* [2012] NZEmpC 198 at [10].

¹¹ *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)*, above n 9, at [56]; and *Oliver v Biggs* [2024] NZEmpC 219 at [38].

¹² *Peter Reynolds Mechanical Ltd v Denyer (Labour Inspector)*, above n 9, at [57]; *Joyce v Ultimate Siteworks Ltd* [2024] NZEmpC 64 at [55]; and *Oliver v Biggs*, above n 11, at [36]–[37].

¹³ *Oliver v Biggs*, above n 11, at [37].

¹⁴ See Frances Lear and Philip Skelton “Enforcement Options” in Christina Inglis and others *Employment Law Conference 2024* (NZSL CLE, Wellington, 2024) 59 for a discussion of enforcement options.

creditor party is also able to serve it with a statutory demand under s 289 of the Companies Act 1993, and if that is not complied with, pursue liquidation.

[13] It is apparent that Mr Wilson has taken no steps to enforce the orders that have been obtained in the Authority, and there is no suggestion that a statutory demand has been served on AZ Scaffolding.

[14] That being the case, I have some reservations about the approach being taken, and whether it is in the best interests of Mr Wilson. Nevertheless, litigation strategy ultimately is a matter for the parties, not for the Court.

Fine ordered

[15] The primary purpose of s 140(6) is to secure compliance. A further purpose is to impose a sanction for non-compliance.¹⁵ Deterrence is also relevant.¹⁶ The circumstances here are such that a fine is warranted.

[16] A range of factors will be relevant in a particular case to the measure of the fine. Those factors will include the nature of the default (deliberate or wilful), whether it is repeated without excuse or explanation, and whether it is ongoing or otherwise. Any steps taking to remedy the breach will be relevant together with the defendant's track record. Proportionality is another factor and will require some consideration of the sums outstanding. Finally, the respective circumstances of the employer, and of the employee, including their financial circumstances, will be relevant.¹⁷

[17] In the absence of engagement from AZ Scaffolding, the Court has no evidence on why payment has not been made. No steps have been taken to remedy the breach, which has been ongoing for over a year.¹⁸

[18] AZ Scaffolding engaged before the Authority, including when it applied to reopen the Authority's investigation. It was served with these proceedings and was emailed the Court's directions. I infer the non-payment is deliberate. I have no basis

¹⁵ *Peter Reynolds Mechanical Ltd v Denya (Labour Inspector)*, above n 9, at [75].

¹⁶ At [77].

¹⁷ *Peter Reynolds Mechanical Ltd v Denya (Labour Inspector)*, above n 9, at [76].

¹⁸ *Wilson v AZ Scaffolding (2017) Ltd*, above n 5, at [24].

for finding that payment of the amounts due in respect of the Authority's compliance order would cause AZ Scaffolding any difficulty. There is, however, no evidence of AZ Scaffolding being in default of Authority or Court orders in other proceedings.

[19] Although there is no direct evidence from Mr Wilson as to the impact on him of AZ Scaffolding's default, the amount covered by the compliance order is significant for an individual, noting too that Mr Wilson's wages, while engaged by AZ Scaffolding, were modest.¹⁹

[20] I have reviewed recent decisions of this Court made under s 140(6)(d).²⁰ Having considered those decisions, and based on the factors outlined above, I consider that a fine of \$10,000 is appropriate.²¹ Pursuant to s 140(7) the Court may direct that the whole or any part of a fine must be paid to the employee concerned.

[21] I order that AZ Scaffolding pay a fine of \$10,000, and of that sum, \$6,000 is to be paid to Mr Wilson, recognising that he has had the burden of these proceedings with the balance of \$4,000 to be paid to the Crown. The fine is to be paid within 28 days of the date of this judgment.

[22] For completeness I note that, pursuant to s 141(2) of the Act, Mr Wilson may enforce the order imposing a fine under part 3 of the Summary Proceedings Act 1957.

[23] Mr Wilson is entitled to costs on this application.²² Based on my review of the documentation filed, I order that AZ Scaffolding pay the sum of \$3,000 as a

¹⁹ *Wilson v AZ Scaffolding (2017) Ltd*, above n 1 at [14].

²⁰ *Cooper v Phoenix Publishing Ltd* [2020] NZEmpC 111; *McMillan v ResqueCorporation 20/20 Ltd* [2023] NZEmpC 76; *Cousens v Star Nelson Holdings Ltd* [2022] NZEmpC 30; *McKay v Wanaka Pharmacy Ltd* [2021] NZEmpC 79; *Ugone v Star Moving Ltd* [2024] NZEmpC 48.

²¹ See *McKay v Wanaka Pharmacy Ltd*, above n 20, at [36] where the Court notes that such fines start at approximately \$10,000 in cases where there is no evidence of financial incapacity on the defaulter's part and the defaulter has made no attempts at remediation.

²² See High Court Rules 2016, r 14.2.

contribution to Mr Wilson's costs. That sum is to be paid within 28 days of the date of this judgment.

J C Holden
Judge

Signed at 10.15 am on 19 February 2025